IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No.2475 of 2006

Mr.Pundalik Annasaheb Deshmukh ..Petitioner

vs.

Mrs.Usha Ravindra Bhutkar ..Respondent.

Petitioner in person.

CORAM: S.B.MHASE J.
13th April, 2006

P.C.

1. The order passed by the Additio‘nal District Judge, Raigad-Alibag on 28th December, 2005 in appeal filed by the present petitioner is under challenge in this petition. By the said order, the appeal filed by the present petitioner as against the order below Exh.29 from Reg.Civil Suit No.31 of 2002 on the file of the Civil Judge, Jr.Dn., Karjat was challenged and the said appeal is dismissed on the ground of tenability.

2. The present petitioner has filed Reg.Civil Suit No.31 of 2002 in the Court of Civil Judge, Jr.Dn., Karjat. In the said suit, the respondent Smt.Usha Bhutkar is the defendant. It further appears that Reg.Civil Suit No.16 of 1999 was filed by the respondent Smt.Usha Ravindra Bhutkar as against the present petitioner/plaintiff and his wife. In Reg.Civil Suit No.16 of 1999 one Advocate Shri Lad was appeared for the said Smt.Usha Ravindra

Bhutkar, namely, the plaintiff in Reg.Civil Suit No.16 of 1999. However,Advocate Shri Lad had withdrawn his vakalatnama on 5th September, 2002 and thereafter the said Smt.Usha Bhutkar namely the plaintiff in Reg.Civil Suit No.16 of 1999 filed an application at Exh.56 and informed to the Court that her Advocate Shri Lad has suddenly withdrawn the vakalatnama, since the defendant namely Shri Pundalik Deshmukh, the present petitioner, who was the defendant in the said suit was handling the said suit improperly and that he was handling the said suit in a
painful manner. Therefore, the Advocate had withdrawn.

She has further informed that she has tried to contacted other Advocates to be engaged as the Advocate for herself but the other Advocates also refused to accept the vakalatnama on the ground that since Shri Deshmukh is there and that he is not knowing the law and since he is following defective system of work, it is very difficult to work against him and, therefore, no Advocate is in a position to file vakalatnama for her and, therefore, ultimately she prayed that time may be granted. Thus, I find that under these circumstances as reported by Smt.Usha Ravind Bhutkar, Advocate Shri Lad had withdrawn his vakalatnama for her. And no other Advocate has accepted her vakalatnama.

3. In Reg.Civil Suit No. 31 of 2002, Smt.Usha Bhutkar has engaged Advocate Shri Lad and,therefore, the

application Exh.29 was submitted by the present petitioner reproducing the contents from Exh.56 of Reg.Civil Suit No.16 of 1999 and prayer was made that it is not open for Shri Lad, Advocate to appear in the matter and the Court has no jurisdiction. The said application Exh.29 was rejected on 19th November, 2005 by a reasoned order by the learned Civil Judge, Jr.Dn., Karjat. As against the order passed below Exh.29 on 19th November, 2005 from Reg.Civil Suit No.31 of 2002, Misc.Appeal was preferred before the District Judge, Raigad which was disposed of by the Additional District Judge Raigad-Alibag on 28th December, 2005 at the admission stage only. The point was raised namely as to how the appeal is tenable as against the order passed below Exh.29. It appears that the present petitioner made a reference to Order IX Rule 9 and Order XI Rule 21 to demonstrate that the appeal is permissible. Needless to say that these provisions are not in respect of the appeal and, therefore, submission made by the petitioner before the Additional District Judge were absolute irrelevant and unwarranted.

4. It appears that the petitioner relied upon order 43 Rule 1 clauses (a) and (f) of the Code of Civil Procedure to demonstrate that the appeal is tenable. However, it is eloquently clear that the orders passed below Exh.29 are not appellable under clauses (a) and (f) of clause 1 of Order 43 and, therefore, the Appellate Court was right in not entertaining the appeal.

5. Apart from this coming to the merit of Exh.29, it requires to be observed that the withdrawal of vakalatnama of any Advocate in one proceedings does not prohibit that Advocate being accepting the vakalatnama of the same party in another proceedings. It is misconceived application. There is no merit in the petition. It is hereby rejected.

(S.B.MHASE J.)